BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.11355 of 2016
and
W.M.P (MD) No. 8710 of 2016

Mariyammal ... Petitioner

Vs.

1. The District Revenue Officer,
   Ramanathapuram Ramanathapuram District.

2. The Revenue Divisional Officer,
   Ramanathapuram, Ramanathapuram District.

3. The Thasildar,
   Taluk Office, Kilakarai,
   Kilakarai Taluk, Ramanathapuram District.

4. Kamali ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records in

Pa.Mu.P6/33771/2014 dated 15.02.2016, signed on 25.02.2016 on the file of the 1st Respondent and quash the same as illegal, unjust, unconstitutional without jurisdiction.

For Petitioner :Mr.S.A.Ajmal Khan

For Respondents :Mr.M.Sarangan,
Additional Government Pleader for R1 to R3
Mr.S.Rajasekar for R4

ORDER

The petitioner has assailed an order dated 24.06.2016 of the District Revenue Officer by which the order dated 09.05.2014 of the Revenue Divisional Officer was affirmed.

2. The petitioner asserts title to a property bearing Survey No. 46/2A1A of an extent of 67 ½ cents. The petitioner states that patta was issued to the petitioner's father in respect thereof. Thereafter, upon the petitioner approaching the revenue authorities for grant of pattta in her name, it is stated that joint patta was issued on 26.08.2004 under patta No. 1571.

3. The fourth respondent filed an appeal before the second respondent and the patta issued jointly in the name of the petitioner was cancelled by order dated 09.04.2014. The said order was affirmed in revision by the first respondent.

4. Learned counsel for the petitioner submits that the first respondent should not have affirmed the cancellation of the joint patta in the petitioner's name in spite of noticing that O.S.No.19 of 2012 is pending adjudication before the jurisdictional civil court. He further submits that the impugned order reveals that it was issued on the basis of advice rendered by the Government Advocate and not on the basis of an independent assessment of the matter. In support of the contention that a revenue authority should not decide questions of title, learned counsel relies upon judgments of a Division Bench of this Court in *Vishwas Footwear Company Ltd. v. The District Collector, Kancheepuram (**Vishwas Footwear**)* , 2011 (5) CTC 94 and the Hon'ble Supreme Court of India in *Edelweiss Asset Construction Company Limited v. R.Perumalswamy and others*, (2021) 11

SCC 98. Learned counsel also relies on a subsequent judgment in Harvey Nagar Resident's Welfare Association, Madurai v. the District Collector, 2014 (1) CWC 100, which followed the judgment in ***Vishwas Footwear***. Therefore, learned counsel contends that the impugned order is liable to be quashed.

5. In response, learned counsel for the fourth respondent submits that the fourth respondent asserts title over 40 cents in Survey Nos.46/16 and 46/17. Learned counsel further submits that O.S.No.19 of 2012 was filed by one T.Aathilingam against the petitioner. Learned counsel points out that the fourth respondent is not a party to the suit and that the suit claim does not relate to the fourth respondent's property. By drawing reference to the impugned order, learned counsel points out that after noticing the nature of the pending suit, the first respondent directed the petitioner to approach the revenue authorities for necessary mutation to the revenue records on the basis of the judgment and decree in O.S.No.19 of 2012.

6. The plaint in O.S.No.19 of 2012 is on record. The suit was instituted by T.Aathilingam against the petitioner, Mariyammal. The fourth respondent is admittedly not a party to the suit. In the said suit, T.Aathilingam has prayed for a declaration that he is the owner of the suit schedule property bearing Survey No.46/2A1A. In paragraph 9 of the plaint, it is alleged that the petitioner herein had obtained a joint patta for the entire extent including the property of the fourth respondent herein.

7. Although the impugned order was issued on 24.06.2016, the petitioner has not instituted a suit against the fourth respondent till date. As on date, therefore, the only civil proceeding in relation to title over the property is between T.Aathilingam and the petitioner. On perusal of the impugned order, it appears that the first respondent took into account the legal opinion of the Government Advocate. The first respondent also noticed that T.Aathilingam has instituted O.S.No.19 of 2012 against the petitioner. Thereafter, the first respondent took into account the fact that the fourth respondent was seeking a patta only in respect of 40 cents of land in Survey Nos.46/16 and 46/17. On that basis, the Revenue Divisional Officer

had directed that patta be granted to the fourth respondent only in respect of the said 40 cents. While affirming the said order, the first respondent has stated that this order would enure only to the benefit of the fourth respondent and that the petitioner could re-approach the revenue authorities upon disposal of O.S.No.19 of 2012.

8. Learned counsel for the petitioner relied heavily on the judgment of the Division Bench of this Court and on the judgmnet of the Hon'ble Supreme Court to contend that questions of title should not be decided by revenue authorities. In the case at hand, there is a title dispute between the petitioner and T.Aathilingam. There is no title dispute, as on date, between the petitioner and the fourth respondent. In the said circumstances, there is no infirmity in the decision of the first respondent inasmuch as the first respondent has not decided any questions of title as between the petitioner and the fourth respondent. The first respondent also left it open to the petitioner to re-approach the revenue authorities upon disposal of O.S.No.19 of 2012. In the said facts and circumstances, I see no reason to interfere with the impugned order. It is needless to say that it is

always open to the petitioner to institute proceedings against the fourth respondent if the petitioner intends to assail the title of the fourth respondent.

9. W.P. (MD) No.11355 of 2016 is disposed of on these terms without any order as to costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

NCC :No
Internet :Yes
Index :No
PKN

To
1. The District Revenue Officer,
Ramanathapuram Ramanathapuram District.

2. The Revenue Divisional Officer,
Ramanathapuram, Ramanathapuram District.

3. The Thasildar,
Taluk Office, Kilakarai,
Kilakarai Taluk, Ramanathapuram District.

SENTHILKUMAR RAMAMOORTHY, J.

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